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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,403	01/14/2002	David V. Dobreski	47097-00018USD1	3399

30223 7590 06/20/2003

JENKENS & GILCHRIST, P.C.
225 WEST WASHINGTON
SUITE 2600
CHICAGO, IL 60606

EXAMINER

MIGGINS, MICHAEL C

ART UNIT PAPER NUMBER

1772

DATE MAILED: 06/20/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/046,403

Applicant(s)

DOBRESKI ET AL. 

Examiner

Michael C. Miggins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-60, 93-124, 134 and 135 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 93-107 and 109-123 is/are allowed.
- 6) ☒ Claim(s) 33-60, 134 and 135 is/are rejected.
- 7) ☒ Claim(s) 108 and 124 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 44, 60, 108 and 124 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 44, 60, 108 and 124 are all dependent claims which recite the limitation "... wherein at least one of said fin portions comprises a blend of the first resin and said second resin ...". However, in each case, the independent claim from which either 44, 60, 108 and 124 depend already recite that at least one of said fin portions comprises a blend of the first resin and said second resin. Therefore, claims 44, 60, 108 and 124 fail to further limit the independent claim from which they depend. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 33, 36-44, 45, 48-60 and 134 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takubo et al. (U.S. Patent No. 5,415,904) in view of Hodgson, Jr. (U.S. Patent No. 5,206,075).

Takubo et al. teach a fastener (11 from Fig. 4 and column 3, lines 20-68) for a plastic bag (23 from Fig. 4 and column 3, lines 20-68), comprising a male track (12 from Fig. 4 and column 3, lines 20-68) including a male profile and a first fin portion (14 from Fig. 4 and column 3, lines 20-68) and a female profile (13 from Fig. 4 and column 3, lines 20-68) and a second fin portion (17 from Fig. 4 and column 3, lines 20-68), said male and female profiles having complementary cross-sections, at least one of said fin portions made from a first resin having a melt index from about 0.2 to about 20 g/10 min. (column 3, lines 29-30) and a second resin which is a low density polyethylene (column 4, lines 55-63), at least one said fin portions comprising from about 5 to 50 wt. % of said first resin, and from about 50 to 95 wt. % of said second resin (since Takubo et al. teach about 10 to 40 wt. % of said first resin, and from about 90 to 60 wt. % of said second resin, see column 4, lines 55-63, these ranges read on the claimed ranges recited in claims 33, 37-42, 45, 52-58 and 134) (applies to instant claims 33, 37-42, 44-45, 52-58, 60 and 134).

Takubo et al. teach applicant's invention substantially as claimed. However, Takubo et al. fail to teach that the first resin is prepared in the presence of a single site catalyst and has a polydispersity of from about 2 to about 3, wherein said first resin is prepared in the presence of a metallocene catalyst, wherein first resin is a very low density polyethylene, wherein said first resin is a metallocene-catalyzed polyethylene, wherein said first resin has a polydispersity of from about 1.5 to about 4.

Hodgson, Jr. teach a first resin which (column 3, line 52 through column 4, line 68) is prepared in the presence of a single site catalyst (since the first resin is prepared

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using a metallocene catalyst, see column 5, line 61-66) and has a polydispersity of from about 2 to about 3 (column 4, line 65 through column 5, line 2), wherein said first resin is prepared in the presence of a metallocene catalyst (see column 5, line 61-66), wherein first resin is a very low density polyethylene (column 4, lines 14-48), wherein said first resin is a metallocene-catalyzed polyethylene (see column 5, line 61-66), wherein said first resin has a polydispersity of from about 1.5 to about 4 (column 4, line 65 through column 5, line 2) (applies to instant claims 33, 36, 45, 49 and 50-51) in a polymer blend for use in bags and making heat seals in order to provide improved seal strength, tensile strength, film rigidity, haze and gloss, and abrasion resistance.

Therefore it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to have provided a first resin is prepared in the presence of a single site catalyst and has a polydispersity of from about 2 to about 3, wherein said first resin is prepared in the presence of a metallocene catalyst, wherein first resin is a very low density polyethylene, wherein said first resin is a metallocene-catalyzed polyethylene, wherein said first resin has a polydispersity of from about 1.5 to about 4 in the fastener of Takubo et al. in order to provide improved seal strength, tensile strength, film rigidity, haze and gloss, and abrasion resistance as taught or suggested by Hodgson, Jr..

Claims 43 and 59 recite method limitations (i.e. "... wherein at least one of said fin portions comprises a blend of the first resin and said second resin ...") in a product claim which have been given little to no patentable weight since it has been found that even though product-by-process claims are limited by and defined by the process,

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determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

The combined teachings of Takubo et al. and Hodgson, Jr. disclose the claimed invention except for the ultra low density polyethylene for use in the first resin recited in claims 45, 48 and 134. However, Hodgson, Jr. teach the use of very low density polyethylene wherein the density is in a range of 0.88 to 0.915 g/cc. Thus one of ordinary skill in the art would have recognized that the material selected as the first resin material would be readily determined through routine experimentation depending on the desired end results absent some showing of unexpected results, since the only difference in very low density polyethylene and ultra low density polyethylene is a slight difference in density of the compound. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the ultra low density polyethylene for use in the first resin recited in claims 45, 48 and 134 in order to provide a lower weight material while maintaining the improved seal strength, tensile strength, film rigidity, haze and gloss, and abrasion resistance taught by Hodgson, Jr., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (applies to instant claims 45 and 48). *In re Leshin*, 125 USPQ 416.

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The combined teachings of Takubo et al. and Hodgson, Jr. disclose the claimed invention except for the recited melt flow ratio in claims 33, 45 and 134. However, Hodgson, Jr. teach that the melt index is variable between 0.5 and 7.5 dg/min.. Thus one of ordinary skill in the art would have recognized that recited melt flow ratio would be readily determined through routine experimentation depending on the desired end results absent some showing of unexpected results, since the melt flow ratio is indirectly proportional to the melt index. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the recited melt flow ration in the first resin in order to provide improved seal strength, tensile strength, film rigidity, haze and gloss, and abrasion resistance, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges or an optimum value of a result effective variable involves only routine skill in the art (applies to instant claims 33, 45 and 134). *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

4. Claims 34, 46 and 135 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takubo et al. (U.S. Patent No. 5,415,904) in view of Hodgson, Jr. (U.S. Patent No. 5,206,075), as applied to claims 33, 36-44, 45, 48-60 and 134 above, and further in view of Herrington, Jr. et al. (U.S. Patent No. 5,131,121).

Takubo et al. disclose applicant's invention substantially as claimed. However, Takubo et al. fail to disclose first and second fin portions which are attached.

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Herrington, Jr. et al. teach first and second fin portions (column 2, line 62 through column 3, line 35 and Fig. 2) (applies to instant claims 34, 46 and 135) which are attached in a plastic bag for the purpose of providing improved sealing.

5. Claims 35 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takubo et al. (U.S. Patent No. 5,645,905) in view of in view of Hodgson, Jr. (U.S. Patent No. 5,206,075) and Herrington, Jr. et al. (U.S. Patent No. 5,131,121), as applied to claims 34, 46 and 135 above, and further in view of either Boeckmann et al. (U.S. Patent No. 4,896,775) or St. Phillips et al. (U.S. Patent No. 5,775,812).

The difference between the instant claims and Takubo et al. is that Takubo et al. do not teach a plastic bag with a one time openable tamper evident feature.

Boeckman et al. teach a tray with a one time openable tamper evident feature (column 2, lines 18-28) (applies to instant claims 35 and 47) in order to provide a tamper evident feature.

St. Phillips et al. teach a bag with a one time openable tamper evident feature (abstract, column 3, lines 47-65) (applies to instant claims 35 and 47) in order to provide a tamper evident feature.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a one time openable tamper evident feature in the fastener of Takubo et al. in order to provide a tamper evident feature as taught or suggested by either Boeckman et al. or St. Phillips et al..

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Allowabl Subject Matt r

6. Claims 93-124 are allowed over the prior art because the prior art fails to teach or suggest applicant's recited fastener comprising a first and second fin portion wherein at least one of the fin portions is made from a first resin which is either a resin prepared in the presence of a single site catalyst or is an ultra or very-low density polyethylene and a second resin which is a low density polyethylene wherein at least one of the fin portions contains from about 50 to 90 wt. % of said first resin and from about 10 to 50 wt. % of said second resin.

The closest prior art Takubo et al. teach a fastener for a plastic bag, including a first fin and a second fin portion at least one of said fin portions made from a first resin having a melt index from about 0.2 to about 20 g/10 min and a second resin which is a low density polyethylene at least one said fin portions comprising from about 5 to 50 wt. % of said first resin, and from about 50 to 95 wt. % of said second resin. Hodgson, Jr. teach a first resin which is a very low density polyethylene made in the presence of a metallocene catalyst. However, neither reference teaches wherein at least one of the fin portions contains from about 50 to 90 wt. % of said first resin and from about 10 to 50 wt. % of said second resin. Takubo et al. teach that the first resin may be in an amount as high as 40 wt. % but there is nothing Takubo et al. wherein the first resin is in an amount from 50 to 90 wt. %. The prior art provides no motivation for providing the first resin in an amount from 50 to 90 wt. %.

Applicant must also overcome the objections to dependent claims 108 and 124.


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is (703) 305-0915. The examiner can normally be reached on Monday-Friday; 1:30-10:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

MCM 
June 13, 2003


HAROLD PYON
SUPERVISORY PATENT EXAMINER


6/16/03